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of the State of California
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7 Attorneys for Complainant
8

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 **JO MARIE LERNER, aka**
14 **JO MARIE LERNER LAMBDIN**
575 S. Newport Street
Chandler, Arizona 85225

15 Registered Nurse License No. 593092

16 Respondent.
17

Case No. 2007-235

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about March 12, 2007, Complainant Ruth Ann Terry, M.P.H., R.N.,
20 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs, filed Accusation No. 2007-235 against Jo Marie Lerner, also known as
22 Jo Marie Lerner Lambdin ("Respondent") before the Board of Registered Nursing.

23 2. On or about January 8, 2002, the Board of Registered Nursing ("Board")
24 issued Registered Nurse License No. 593092 to Respondent. The registered nurse license
25 expired on June 30, 2007.

26 3. On or about March 21, 2007, Carol Sekara, an employee of the
27 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
28 2007-235, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

1 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
2 which was 575 S. Newport Street, Chandler, Arizona, 85225. A copy of the Accusation, the
3 related documents, and Declaration of Service are attached as **exhibit A**, and are incorporated
4 herein by reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. On or about April 10, 2007, the Accusation documents were returned by
8 the U.S. Postal Service marked "Unclaimed." A copy of the envelope returned by the post office
9 is attached hereto as **exhibit B**, and is incorporated herein by reference.

10 6. Business and Professions Code section 118 states, in pertinent part:

11 (b) The suspension, expiration, or forfeiture by operation of law of a
12 license issued by a board in the department, or its suspension, forfeiture, or
13 cancellation by order of the board or by order of a court of law, or its surrender
14 without the written consent of the board, shall not, during any period in which it
15 may be renewed, restored, reissued, or reinstated, deprive the board of its
16 authority to institute or continue a disciplinary proceeding against the licensee
17 upon any ground provided by law or to enter an order suspending or revoking the
18 license or otherwise taking disciplinary action against the license on any such
19 ground.

16 7. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts of
19 the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
20 waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless
21 grant a hearing.

20 8. Respondent failed to file a Notice of Defense within 15 days after service
21 upon her of the Accusation and therefore waived her right to a hearing on the merits of
22 Accusation No. 2007-235.

23 9. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at
25 the hearing, the agency may take action based upon the respondent's express
26 admissions or upon other evidence and affidavits may be used as evidence without
27 any notice to respondent.

27 10. Pursuant to its authority under Government Code section 11520, the Board
28 finds Respondent is in default. The Board will take action without further hearing and, based on

Respondent's express admissions by way of default and the evidence before it, contained in exhibits A and B, finds that the allegations in Accusation No. 2007-235, are true.

11. The total costs for investigation and enforcement are \$606, as of April 17, 2008.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Jo Marie Lerner, also known as Jo Marie Lerner Lambdin has subjected her Registered Nurse License No. 593092 to discipline.

2. A copy of the Accusation and the related documents and Declarations of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke Respondent's registered nurse license based upon violations of Business and Professions Code sections 2761, subdivision (a)(4) (out-of-state discipline), as alleged in Accusation No. 2007-235.

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1 **ORDER**

2 IT IS SO ORDERED that Registered Nurse License No. 593092, heretofore
3 issued to Respondent Jo Marie Lerner, also known as Jo Marie Lerner Lambdin, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on August 18, 2008.

10 It is so ORDERED July 16, 2008

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12 *LaTranene W. Tate*

13 FOR THE BOARD OF REGISTERED NURSING
14 DEPARTMENT OF CONSUMER AFFAIRS

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25 Attachments:

26 Exhibit A: Accusation No. 2007-235, Related Documents, and Declaration of Service
27 Exhibit B: Copy of Envelope Returned by Post Office

28 DOJ docket number: 03579110SA2006101935
Lerner.Def.wpd

Exhibit A

Accusation No. 2007-235

Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART, State Bar No. 83047
Lead Supervising Deputy Attorney General
4 California Department of Justice
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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-235

13 **JO MARIE LERNER, aka**
14 **JO MARIE LERNER LAMBDIN**
575 S. Newport Street
Chandler, AZ 85225

ACCUSATION

15 Registered Nurse License No. 593092,

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
20 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about January 8, 2002, the Board of Registered Nursing ("Board")
23 issued Registered Nurse License Number 593092 to Jo Marie Lerner, also known as Jo Marie
24 Lerner Lambdin ("Respondent"). The license will expire on June 30, 2007, unless renewed.

25 **JURISDICTION**

26 3. Section 2750 of the Business and Professions Code ("Code") provides:

27 Every certificate holder or licensee, including licensees
28 holding temporary licenses, or licensees holding licenses placed
in an inactive status, may be disciplined as provided in this

1 article [Article 3 of the Nursing Practice Act (Bus. & Prof.
2 Code, § 2700 et seq.)]. As used in this article, 'license'
3 includes certificate, registration, or any other authorization
4 to engage in practice regulated by this chapter. The proceedings
5 under this article shall be conducted in accordance with Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of
6 Title 2 of the Government Code [the Administrative
7 Procedure Act], and the board shall have all the powers
8 granted therein.

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11 4. Code section 2764 provides:

12 The lapsing or suspension of a license by operation of
13 law or by order or decision of the board or a court of law, or the
14 voluntary surrender of a license by a licentiate shall not deprive
15 the board of jurisdiction to proceed with any investigation of
16 or action or disciplinary proceeding against such license, or
17 to render a decision suspending or revoking such license.

18 STATUTORY PROVISIONS

19 5. Code section 2761 provides, in pertinent part:

20 The board may take disciplinary action against a certified or
21 licensed nurse or deny an application for a certificate or
22 license for any of the following:

23 (a) Unprofessional conduct . . .

24

25 (4) Denial of licensure, revocation, suspension, restriction,
26 or any other disciplinary action against a health care professional
27 license or certificate by another state or territory of the United
28 States, by any other government agency, or by another California
health care professional licensing board. A certified copy of the
decision or judgment shall be conclusive evidence of that action.

6. Code section 125.3 provides that the Board may request the administrative
law judge to direct a licentiate found to have committed a violation or violations of the licensing
act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of
the case. procure or assist at a criminal abortion.

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1 **CAUSE FOR DISCIPLINE**

2 (Out-of-State Disciplinary Actions)

3 7. Respondent's license is subject to disciplinary action for unprofessional
4 conduct under Code section 2761, subdivision (a)(4), in that out-of state disciplinary actions
5 were taken against Respondent by the Arizona State Board of Nursing, as follows:

6 a. Consent Agreement and Order No. 0505009. Effective
7 September 23, 2005, in the Consent Agreement and Order No. 0505009 in the disciplinary
8 action entitled, *"In the Matter of Professional Nurse License No.: RN117295 Issued to: Jo*
9 *Marie Lerner (AKA Lambdin),"* Respondent's State of Arizona registered nurse's license was
10 disciplined by the Arizona State Board of Nursing by being placed on probation for twenty-four
11 (24) months. A copy of Consent Agreement and Order No. 0505009 in the disciplinary action
12 entitled, *"In the Matter of Professional Nurse License No.: RN117295 Issued to: Jo Marie*
13 *Lerner (AKA Lambdin),"* is attached hereto as "Exhibit A," and is incorporated herein
14 by reference.

15 b. Consent Agreement and Order No. 0511122. Effective
16 March 20, 2006, in the Consent Agreement and Order No. 0511122 in the disciplinary
17 action entitled, *"In the Matter of Professional Nurse License No.: RN117295 Issued to: Jo*
18 *Marie Lerner (AKA Lambdin),"* Respondent's State of Arizona registered nurse's license
19 was disciplined by the Arizona State Board of Nursing by being placed on stayed
20 revocation/probation for eighteen (18) months, followed by a period of eighteen (18) months
21 standard probation. A copy of Consent Agreement and Order No. 0511122 in the disciplinary
22 action entitled, *"In the Matter of Professional Nurse License No.: RN117295 Issued to: Jo*
23 *Marie Lerner (AKA Lambdin),"* is attached hereto as "Exhibit B," and is incorporated herein
24 by reference.

25 c. Notice of Revocation. Effective September 22, 2006, in the Notice
26 of Revocation in the disciplinary action entitled, *"In the Matter of Professional Nurse License*
27 *No.: RN117295 Issued to: Jo Marie Lerner (AKA Lambdin),"* Respondent's State of Arizona
28 registered nurse's license was revoked by the Arizona State Board of Nursing. A copy of the

1 Notice of Revocation in the disciplinary action entitled, "*In the Matter of Professional Nurse*
2 *License No.: RN117295 Issued to: Jo Marie Lerner (AKA Lambdin)*," is attached hereto as
3 "Exhibit C," and is incorporated herein by reference.

4 **PRAYER**

5 **WHEREFORE**, Complainant requests that a hearing be held on the matters
6 herein alleged, and that following the hearing the Board issue a decision:

- 7 1. Revoking or suspending Registered Nurse License Number 593092,
8 issued to Jo Marie Lerner, also known as Jo Marie Lerner Lambdin;
9 2. Ordering Jo Marie Lerner, also known as Jo Marie Lerner Lambdin
10 to pay the reasonable costs incurred by the Board in the investigation and enforcement of this
11 case pursuant to Code section 125.3; and,
12 3. Taking such other and further action as deemed necessary and proper.

13
14 **DATED:** 3/12/07


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16 
17 RUTH ANN TERRY, M.P.H., R.N.
18 Executive Officer
19 Board of Registered Nursing
20 Department of Consumer Affairs
21 State of California
22 Complainant
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EXHIBIT A

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF PROFESSIONAL)
NURSE LICENSE NO.: RN117295)
ISSUED TO:)
JO MARIE LERNER (AKA LAMBDIN))
RESPONDENT)

**CONSENT AGREEMENT
AND
ORDER NO. 0505009**

CONSENT AGREEMENT

A complaint charging JO MARIE LERNER (Respondent") with violation of the Nurse Practice Act has been received by the Arizona State Board of Nursing ("Board"). In the interest of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements and the responsibilities of the Board, and pursuant to A.R.S. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Based on the evidence before it, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent holds Board issued professional nurse license no. RN117295.
2. From on or about February 9, 2004 to on or about September 2, 2004, Respondent was employed as a professional nurse at the Arizona Heart Institute (AHI) in Phoenix, Arizona. On or about August 26, 2004, Respondent cared for patient C. H., who underwent a left heart catheterization. Following the removal of the brachial sheath, the patient experienced oozing at the site. The physician had ordered that manual pressure be applied and that he be notified in the event of bleeding. Respondent placed a Coban dressing on the site, which temporarily occluded circulation, and failed to immediately notify the physician that the

patient was bleeding. According to Respondent, she was unable to notify the physician immediately because he was unavailable.

3. On or about August 27, 2004, Respondent cared for patient F. R., who suffered cardiopulmonary arrest in the cath lab. Respondent left the room during the code, after the physician was rude to her, and instructed her to leave.

4. On or about August 30, 2004, Respondent administered Versed 2 mg. and Fentanyl 100 mcg to patient P. J. without a physician's order. According to Respondent, the physician wished to have his patients sedated for cardiac procedures, and allowed her discretion in medicating his patients with Versed and Fentanyl, although he did not write a specific order. Respondent admitted to medicating this doctor's patients often in this manner.

5. According to a retrospective audit done by staff at the AHI, Respondent signed out and/or administered controlled substances to 12 patients between April and August 2004 without a specific physicians' order, and without documenting the medication. Respondent denied she diverted any medication, but admitted she failed to document verbal physician orders and the administration of the medication. On or about August 31, 2005, Respondent's urine drug screen was negative.

6. On or about September 2, 2004, Respondent's employment at AHI was terminated. Respondent admitted to having attitude and personal problems while she was employed at AHI.

7. On or about September 20, 2004, Respondent was hired as a professional nurse at St. Luke's Medical Center in Phoenix, Arizona. According to her current manager, Respondent was bright and eager to learn, honest, and had no performance issues in her year's employment.

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

The conduct and circumstances described in the Findings of Fact constitute violations of A.R.S. § 32-1663 (D) as defined in § 32-1601 (16) (d) and (g) and A.A.C. R4-19-403 (1), (5), (6), (13), (14), and (25).

The conduct and circumstances described in the Findings of Fact constitute sufficient cause pursuant to A.R.S. § 32-1664(N) to revoke, suspend or take other disciplinary action against Respondent's license to practice as a professional nurse in the State of Arizona.

Respondent admits the Board's Findings of Fact and Conclusions of Law.

In lieu of a formal hearing on these issues, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to the Order except in the limited circumstance(s) specified in Paragraph 17 of this Order.

Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Respondent understands that the admissions in the Findings of Fact are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.

Respondent understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or is waived.

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto.

Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by the Respondent, the agreement cannot be withdrawn without the Board's approval or by stipulation between the Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.

Jo Marie Lerner
Respondent

Dated: 11/15/2005

ARIZONA STATE BOARD OF NURSING

Joey Ridenour R.N., M.N.
Joey Ridenour, R.N., M.N.
Executive Director

Dated: September 23, 2005

MUNGER/LERNER RN117295

ORDER

In view of the above Findings of Fact, Conclusions of Law and the consent of Respondent, the Board hereby issues the following Order:

- A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing is accepted.
- B. Respondent's license is placed on probation for 24 months. Prior to termination of probation, Respondent shall work as a professional nurse for a minimum of 24 months (not less than sixteen hours a week).
- C. This Order becomes effective upon the Board and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is

signed by the Board and by Respondent. If the Consent agreement is signed on different dates, the later is the effective date. Probation is to commence the effective date of this Order.

D. If Respondent is noncompliant with any of the terms of the Order, Respondent's noncompliance shall be reviewed by the Board for consideration of possible further discipline on Respondent's nursing license.

E. If Respondent is convicted of a felony, Respondent's license shall be automatically revoked for a period of five years. Respondent waives any and all rights to a hearing, rehearing or judicial review of any revocation imposed pursuant to this paragraph.

F. Probation is subject to the following terms and conditions:

TERMS OF PROBATION

1. Stamping of License

Within seven days of the effective date of this Order, Respondent shall submit her license to be stamped "**PROBATION.**" While this Order is in effect, if the Board issues any certificates or licenses authorized by statute, except a nursing assistant certificate, such certificate or license shall also be stamped "probation." Respondent is not eligible for a multistate "Compact" license.

2. Drug Testing (ON-CALL)

Respondent shall, upon request by the Board or its designee, submit to a random drug screen. Within seven days of the effective date of this Order, Respondent shall enroll in a Board acceptable urine drug-screening program, and obtain an appropriate randomized color for "on-call" testing. The drug screen will be a Board-approved drug screen and may include additional chemicals. Respondent must notify the Board-approved drug testing laboratory and the Arizona State Board of Nursing, in writing, of unavailability to test prior to

the anticipated absence. If Respondent fails to provide a drug test when called ("failure to show"), or has a confirmed positive drug screen, the Board or its designee may require two random drug test samples per month for the six months immediately following either the failure to show or confirmed positive drug screen.

3. Abstain from Alcohol Use

Respondent/Respondent shall abstain completely from the personal use of alcoholic beverages within 12 hours prior to working in any capacity involving nursing licensure.

4. Abstain From Unauthorized Drug Use/Proof of Prescription

Respondent shall abstain completely from the personal use or possession of controlled substances, as defined in the State Controlled Substances Act, and dangerous drugs as defined by law, or any drugs requiring a prescription.

Orders prohibiting Respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to Respondent for a bona fide illness or condition by a medical provider. During the duration of this Order, Respondent shall select one medical provider to coordinate her health care needs and to be aware of all prescriptions utilized by Respondent. Respondent shall immediately submit to that provider a copy of this Consent Agreement and Order to include the Findings of Fact and Conclusions of Law and shall execute all release of information form(s) as required by the Board or its designee. The medical provider shall, within one week of the effective date of the consent agreement, inform the Board, in writing, of knowledge of Respondent's Order and provide a list of medications prescribed for Respondent. DURING THE DURATION OF THE CONSENT AGREEMENT, RESPONDENT SHALL CAUSE ALL PROVIDERS TO NOTIFY THE BOARD OF ANY ADDITIONAL MEDICATIONS ORDERED BY THE PROVIDER. THE

NOTIFICATION SHALL BE MADE IN WRITING WITHIN ONE WEEK OF THE
PROVIDER'S ISSUANCE OF THE PRESCRIPTION.

If Respondent has a lawful prescription for a narcotic or mood-altering drug, Respondent shall cause her prescribing provider to submit monthly reports to the Board by the 30th day of each month regarding the continued need for the prescribed narcotic or mood-altering medications. The Board or its designee may, at any time, request the provider to document the continued need for prescribed medications. Respondent shall keep a written record of medications taken, including over-the-counter drugs, and produce such record upon request by the Board or its designee.

5. Notification of Practice Settings

Any setting in which Respondent accepts employment, which requires RN licensure, shall be provided with a copy of the entire Order on or before the date of hire. Within seventy-two hours of Respondent's date of hire, Respondent shall cause her immediate supervisor to inform the Board, in writing and on employer letterhead, acknowledgment of the supervisor's receipt of a copy of this Consent Agreement and Order and the employer's ability to comply with the conditions of probation. In the event Respondent is attending a nursing program, Respondent shall provide a copy of the entire Consent Agreement and Order to the Program Director. Respondent shall cause the Program Director to inform the Board, in writing and on school letterhead, acknowledgment of the program's receipt of a copy of the Consent Agreement and Order and the program's ability to comply with the conditions of probation during clinical experiences.

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6. Quarterly Reports

Within 7 days of each assigned quarterly reporting due date, if Respondent is working in any position which requires RN licensure Respondent shall cause every employer Respondent has worked for during the quarter to provide to the Board, in writing, employer evaluations on the Board-approved form. The first report is due on the first assigned quarterly report due date after the effective date of the Order. Receipt of notice of an unsatisfactory employer evaluation, verbal or written warning, counseling or disciplinary action any of which pertain to patient care practice issues, or termination from a place of employment shall be considered as noncompliance with the terms of the Order. In the event Respondent is not working in a position which required RN licensure, or attending school during any quarter or portion thereof, Respondent shall provide to the Board, in writing, a self-report describing other employment or activities on the Board-approved form. Failure to provide employer evaluations/or self-reports within 7 days of the reporting date shall be considered as noncompliance with the terms of the Order.

7. Practice Under Direct Supervision

Respondent shall practice as a professional nurse or in a student nurse capacity, only under the direct supervision of a professional nurse in good standing with the Board, except when Respondent is on call. Respondent may practice under on-site supervision only when she is called in for scrub or nurse call for the Cardiac Cath Lab at St. Luke's Medical Center. Direct supervision is defined as having a professional nurse present on the same unit with the Respondent when ever Respondent is practicing as a professional. On-site supervision is defined as having a professional nurse in present in the building while Respondent is on duty. The supervising nurse shall have read this Consent Agreement and Order to include the Findings

of Fact and Conclusions of Law, and Order, and shall provide input on Respondent's employer evaluations to the Board. The supervising nurse shall be primarily one person, who may periodically delegate to other qualified personnel, who shall also have read this Consent Agreement and Order to include Findings of Fact, Conclusions of Law. In the event that the assigned supervising nurse is no longer responsible for the supervision required by this paragraph, Respondent shall cause her new supervising nurse to inform the Board, in writing and on employer letterhead, acknowledgment of the new supervisor's receipt of a copy of this Consent Agreement and Order to include the Findings of Fact and Conclusions of Law and the new supervising nurse's agreement to comply with the conditions of probation within ten days of assignment of a new supervising nurse.

8. Acceptable Hours of Work

Respondent shall work only the day or evening shift. Evening shift is defined as a shift that ends prior to midnight. Within a 14-day period Respondent shall not work more than 84 scheduled hours.

Respondent may work three 12-hour shifts in one seven day period and four 12-hour shifts in the other seven-day period, but Respondent may not work more than 3 consecutive 12-hour shifts during this probationary period. Respondent shall not work 2 consecutive 8 hour shifts within a 24 hour period or be scheduled to work 16 hours within a 24 hour period.

9. Registry Work Prohibited

Respondent may take call (nurse and scrub) as long as she is employed in the Cardiac Cath Lab at St. Luke's Medical Center in Phoenix, Arizona. Otherwise, Respondent may

not work for a nurse's registry, home health, traveling nurse agency, any other temporary employing agencies, float pool, or position that requires on-call status.

10. Out-of-State Practice/Residence

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, it must first be approved by the Board prior to leaving the state. If Respondent fails to receive such approval before leaving the state, none of the time spent out-of-state will be credited to the fulfillment of the terms and conditions of this Order.

11. Release of Information Forms

Respondent shall immediately execute all release of information forms as may be required by the Board or its designee.

12. Interview With the Board or Its Designee

Respondent shall appear in person or if residing out of state telephonically for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

13. Renewal of License

In the event the Respondent's professional nurse license is scheduled to expire while this Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee, and otherwise maintain qualification to practice nursing in Arizona.

14. Change of Employment/Personal Address/Telephone Number

Respondent shall notify the Board, in writing, within one week of any change in nursing employment, personal address or telephone number.

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15. Obey All Laws

Respondent shall obey all federal, state and local laws, and all laws/rules governing the practice of nursing in this state. Offenses such as driving under the influence may subject Respondent to further disciplinary action, however, commission of minor civil traffic moving violations are excluded.

16. Costs

Respondent shall bear all costs of complying with this Order.

17. Violation of Probation

If Respondent is noncompliant with this Order in any respect, the Board or its designee may notify Respondent's employer of the noncompliance. Additionally, the Board may revoke probation and take further disciplinary action for noncompliance with this Order after affording Respondent notice and the opportunity to be heard. If a complaint or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. Voluntary Surrender of License

Respondent may, at any time this Order is in effect, voluntarily request surrender of her license.

19. Completion of Probation

Upon successful completion of the terms of probation, Respondent shall request formal review by the Board, and after formal review by the Board, Respondent's nursing license may be fully restored by the appropriate Board action if compliance with this Order has

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been demonstrated.

ARIZONA STATE BOARD OF NURSING

SEAL

Joey Ridenour RN MN

Joey Ridenour, R.N., M.N.
Executive Director

Dated: September 23, 2005

JR/SMM:mmm

Signed this 15th day of November, 2005 in the Board office.

By: *Lynsey Munger, RN, MS*
Nurse Practice Consultant

EXHIBIT B

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF PROFESSIONAL)
NURSE LICENSE NO.: RN117295)
ISSUED TO:)

JO MARIE LERNER (AKA LAMBDIN))
RESPONDENT)

**CONSENT AGREEMENT
AND
ORDER NO. 0511122**

CONSENT AGREEMENT

A complaint charging JO MARIE LERNER ("Respondent") with violation of the Nurse Practice Act has been received by the Arizona State Board of Nursing ("Board"). In the interest of a prompt and speedy settlement of the above-captioned matter, consistent with the public interest, statutory requirements and the responsibilities of the Board, and pursuant to A.R.S. § 41-1092.07(F)(5), the undersigned parties enter into this Consent Agreement as a final disposition of this matter.

Based on the evidence before it, the Board makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent holds Board issued professional nurse license no. RN117295.
2. From on or about February 9, 2004 to on or about September 2, 2004, Respondent was employed as a professional nurse at the Arizona Heart Institute (AHI) in Phoenix, Arizona. On or about August 26, 2004, Respondent cared for patient C. H., who underwent a left heart catheterization. Following the removal of the brachial sheath, the patient experienced oozing at the site. The physician had ordered that manual pressure be applied and that he be notified in the event of bleeding. Respondent placed a Coban dressing on the site, which temporarily occluded circulation, and failed to immediately notify the physician that the patient was bleeding. According to Respondent, she was unable to notify the physician immediately because he was unavailable.

3. On or about August 27, 2004, Respondent cared for patient F. R., who suffered cardiopulmonary arrest in the cath lab. Respondent left the room during the code, after the physician was rude to her, and instructed her to leave.

4. On or about August 30, 2004, Respondent administered Versed 2 mg. and Fentanyl 100 mcg to patient P. J. without a physician's order. According to Respondent, the physician wished to have his patients sedated for cardiac procedures, and allowed her discretion in medicating his patients with Versed and Fentanyl, although he did not write a specific order. Respondent admitted to medicating this doctor's patients often in this manner.

5. According to a retrospective audit done by staff at the AHI, Respondent signed out and/or administered controlled substances to 12 patients between April and August 2004 without a specific physicians' order, and without documenting the medication. Respondent denied she diverted any medication, but admitted she failed to document verbal physician orders and the administration of the medication. On or about August 31, 2005, Respondent's urine drug screen was negative.

6. On or about September 2, 2004, Respondent's employment at AHI was terminated. Respondent admitted to having attitude and personal problems while she was employed at AHI.

7. On or about September 20, 2004, Respondent was hired as a professional nurse at St. Luke's Medical Center in Phoenix, Arizona. According to her current manager, Respondent was bright and eager to learn, honest, and had no performance issues in her year's employment.

8. On or about November 15, 2005, Respondent entered into Consent Agreement and Order No. 0505009 for twenty four (24) months standard probation with terms and conditions.

9. On or about November 17, 2005, Trinise Thompson of Human Resources at St. Luke's Hospital informed Board staff that Respondent's behavior was suggestive of impairment. She was first made aware of this behavior on or about November 7, 2005.

Diversion in the Cardiac Catheterization Lab had been suspected there because of issues with the pyxis machine. All of the nurses underwent urine drug screening. Respondent's specimen was reported to be dilute. (The report of a diluted specimen has been disputed by the Board's independent evaluator, Dr. Sucher.) A second, monitored urine drug screen was obtained on November 18, 2006; this specimen was also reported to be dilute and meeting criteria for a substituted specimen. According to Dr. Sucher, the results could be considered as positive.

10. On November 16, 2005, while working in the Cardiac Catheterization Laboratory at St. Luke's Hospital, Respondent was found to have a syringe of clear fluid in her pocket. Although Respondent stated that the syringe contained normal saline for her dry eyes, the contents of the syringe were subsequently tested and found to contain Demerol. There was no chain of custody for the positive results and Respondent disputes the validity of the results.

11. On December 2, 2005, a (random) urine drug screen was provided by Respondent which tested positive for Meperidine and Normeperidine. Respondent's employment was subsequently terminated.

12. Between on or about January 6, 2006, and February 13, 2006, Respondent was employed by Scottsdale Endoscopy Center.

13. On or about January 20, 2006, a fellow staff member saw two 3cc syringes in Respondent's purse and informed Ms. Scott, Clinical Director, who also observed them. Scott confronted Respondent who proceeded to squirt the contents of two syringes into her eyes. It is unknown what was in either syringe. A urine drug screen performed the same day was negative.

The 11-panel test did not screen for Meperidine or Fentanyl. According to Respondent, she did not squirt the contents in her eyes but rather used the contents to clean her contact lenses.

14. On her return from vacation, Ms. Scott was informed that Respondent had violated facility policies. Violations included (a) injecting Lidocaine for an IV start and (b) replacing saline in a multi dose vial with Lactated Ringers (LR) solution. Scott also received reports of practices by Respondent suggestive of drug seeking. According to Respondent, she did not place LR in a normal saline vial, did not use Lidocaine for an IV start and was unaware of these allegations until meeting with Board staff.

15. Ms. Scott stated that when she confronted Respondent on Monday February 13, 2006, Respondent appeared impaired and complained of being sick. She denied using drugs but could offer no explanation for any of the behaviors noted above. On February 13, 2006, Respondent advised Board staff by voice mail that she had been terminated from employment due to narcotics discrepancies and concerns for patient safety. Respondent denies that she was impaired on February 13, 2006 and reports that she had informed Scott that she was not feeling well.

16. On or about February 15 and 28, 2006, Respondent met with Michel A. Sucher MD for an independent substance abuse evaluation. Sucher was unable to make a diagnosis of chemical dependency and believed Respondent could practice safely with access to narcotics with random drug screening and performance monitoring.

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

The conduct and circumstances described in the Findings of Fact constitute violations of A.R.S. § 32-1663 (D) as defined in § 32-1601 (16) (d) and (g) and A.A.C. R4-19-

403 (1), (12), (13) and (25), (amended effective July 19, 1995), (paragraphs 1-9) and A.A.C. R4-19-403 (1), (17), (18) and (31), (amended effective November 13, 2005), (paragraphs 10-13).

The conduct and circumstances described in the Findings of Fact constitute sufficient cause pursuant to A.R.S. § 32-1664(N) to revoke, suspend or take other disciplinary action against Respondent's license to practice as a professional nurse in the State of Arizona.

Respondent admits the Board's Findings of Fact and Conclusions of Law.

In lieu of a formal hearing on these issues, Respondent agrees to issuance of the attached Order and waives all rights to a hearing, rehearing, appeal or judicial review relating to the Order except in limited circumstance(s).

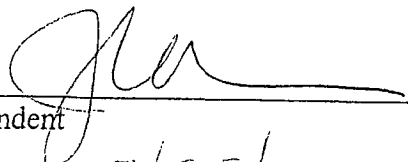
Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Respondent understands that the admissions in the Findings of Fact are conclusive evidence of a violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.

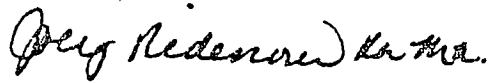
Respondent understands the right to consult legal counsel prior to entering into this Consent Agreement and such consultation has either been obtained or is waived.

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's signature obtained via facsimile shall have the same effect as an original signature. Once signed by the Respondent, the agreement cannot be withdrawn without the Board's approval or by stipulation between the Respondent and the Board's designee. The effective date

of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.


Respondent
Dated: 5/05/2006

ARIZONA STATE BOARD OF NURSING


Joey Ridenour, R.N., M.N.
Executive Director

Dated: March 20, 2006

WIGGIN/LERNER RN117295

ORDER

In view of the above Findings of Fact, Conclusions of Law and the consent of Respondent, the Board hereby issues the following Order:

A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing is accepted.

B. Respondent's license is placed on stayed revocation/probation for 18 months followed by a period of 18 months standard probation. Prior to termination of probation, Respondent shall work as a professional nurse for a minimum of 24 months (not less than sixteen hours a week).

C. This Order becomes effective upon the Board and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent agreement is signed on different dates, the later is the effective date. Probation is to commence the effective date of this Order.

D. If Respondent is non-compliant with any of the terms of the Order during the 18-month stayed revocation period, the stay of the revocation shall be lifted and Respondent's license shall be automatically revoked for a period of five years. The Board or its designee, in its sole discretion, shall determine noncompliance with the stayed portion of the Order. Respondent waives any and all rights to a hearing, rehearing or judicial review of any revocation imposed pursuant to this paragraph.

E. If Respondent is noncompliant with any of the terms of the Order during the 18-month standard probation portion of the Order, Respondent's noncompliance shall be reviewed by the Board for consideration of possible further discipline on Respondent's nursing license.

F. If Respondent is convicted of a felony, Respondent's license shall be automatically revoked for a period of five years. Respondent waives any and all rights to a hearing, rehearing or judicial review of any revocation imposed pursuant to this paragraph.

G. Stayed Revocation/Probation is subject to the following terms and conditions:

TERMS OF STAYED REVOCATION/PROBATION and TERMS OF PROBATION

1. Stamping of License

Respondent's license shall be stamped "**PROBATION.**" While this Order is in effect, if the Board issues any certificates or licenses authorized by statute, except a nursing assistant certificate, such certificate or license shall also be stamped "probation." Respondent is not eligible for a multistate "Compact" license.

2. Drug Testing

Within 7 days of the effective date of this Order and throughout the term of this Order, Respondent shall enroll in a program that meets Board criteria for random drug testing. Random drug testing shall be done at a minimum of twice per month, for a period of 12

months, thereafter a minimum of once per month, and may be required more frequently as requested by the Board or its designee. Respondent shall notify the drug testing laboratory and the Board, in writing, of unavailability to test before the anticipated absence. If Respondent is unable to submit a specimen on a date requested due to illness, Respondent must provide in writing within 7 days of the missed specimen, documentation from a medical provider who has personally seen Respondent on the day of the requested drug test confirming that Respondent was not physically able to report to the laboratory for drug testing. In addition, any occurrence of the following conditions constitutes noncompliance: a positive drug test showing evidence of any drug other than an authorized drug; submission of a specimen where the integrity has been compromised, as indicated by the presence of adulterants, or submission of a specimen deemed not compatible with human life; failure to submit to a drug test on a day when a drug test has been requested by either the Board, its designee, or the laboratory; and submission of a urine sample that is below the acceptable volume or temperature to be tested. A dilute specimen is considered invalid and will result in Respondent being required promptly to submit a "make-up" specimen that is not dilute upon request by the Board or its designee. A positive drug test showing evidence of any drug other than an authorized drug shall result in immediate notification of Respondent's employer by the Board.

3. Abstain From Unauthorized Drug Use/Proof of Prescription

Respondent shall abstain completely from the personal use or possession of controlled substances, as defined in the State Controlled Substances Act, and dangerous drugs as defined by law, or any drugs requiring a prescription.

Orders prohibiting Respondent from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to Respondent for a bona fide illness or condition by a medical provider. During the duration of this Order,

Respondent shall select one medical provider to coordinate her health care needs and to be aware of all prescriptions utilized by Respondent. Respondent shall immediately submit to that provider a copy of this Consent Agreement and Order to include the Findings of Fact and Conclusions of Law and shall execute all release of information form(s) as required by the Board or its designee. The medical provider shall, within one week of the effective date of the consent agreement, inform the Board, in writing, of knowledge of Respondent's Order and provide a list of medications prescribed for Respondent. DURING THE DURATION OF THE CONSENT AGREEMENT, RESPONDENT SHALL CAUSE ALL PROVIDERS TO NOTIFY THE BOARD OF ANY ADDITIONAL MEDICATIONS ORDERED BY THE PROVIDER. THE NOTIFICATION SHALL BE MADE IN WRITING WITHIN ONE WEEK OF THE PROVIDER'S ISSUANCE OF THE PRESCRIPTION.

If Respondent has a lawful prescription for a narcotic or mood-altering drug, Respondent shall cause her prescribing provider to submit monthly reports to the Board by the 30th day of each month regarding the continued need for the prescribed narcotic or mood-altering medications. The Board or its designee may, at any time, request the provider to document the continued need for prescribed medications. Respondent shall keep a written record of medications taken, including over-the-counter drugs, and produce such record upon request by the Board or its designee.

4. Abstain from Alcohol Use

Respondent/Respondent shall abstain completely from the personal use of alcoholic beverages.

5. One Medical Provider

Within thirty days of the effective date of this Order, Respondent shall submit to the Board for approval the name of one treatment professional of Respondent's choice to conduct

medical treatment for Respondent. Within seven days of receipt of approval from the Board Respondent shall make an appointment to begin participation in treatment. Respondent shall immediately execute the appropriate release of information form(s) to allow the treating professional(s) to communicate information to the Board or its designee, and Respondent shall immediately provide a copy of the entire Consent Agreement to all treating professional(s). Within seven days of the beginning of treatment, Respondent shall cause any and all treating professional(s) to provide written verification of enrollment in treatment and verifying receipt of the consent agreement. Thereafter, Respondent shall cause any and all treating professional(s) to provide quarterly reports to the Board according to the quarterly reporting schedule assigned to Respondent. Respondent shall continue undergoing treatment until the treating professional(s) notify the Board, in writing on letterhead, that treatment is no longer needed. The Board reserves the right to amend the Order based on recommendation(s) of treating professional(s).

6. Pharmacy Profiles

Throughout the duration of this Order, Respondent shall use only one pharmacy from which to obtain her prescriptions. Within 30 days of the effective date of the Consent Agreement, Respondent shall submit in writing to the Board the name of every pharmacy and/or facility from which Respondent is currently obtaining prescription medications, and shall submit the name of the pharmacy from which she chooses to obtain future prescriptions. Throughout the duration of the Order, Respondent must inform the Board in writing within 7 days of any additions or changes in pharmacies from which Respondent obtains medications. Respondent shall submit a copy of all pharmacy profiles to the Board on a quarterly basis according to the assigned reporting due dates, and upon request from the Board or its designee. The first report shall be due on the first quarterly due date after the effective date of this Order.

7. Notification of Practice Settings

Any setting in which Respondent accepts employment, which requires RN licensure, shall be provided with a copy of the entire Order on or before the date of hire. Within seventy-two hours of Respondent's date of hire, Respondent shall cause her immediate supervisor to inform the Board, in writing and on employer letterhead, acknowledgment of the supervisor's receipt of a copy of this Consent Agreement and Order and the employer's ability to comply with the conditions of probation. In the event Respondent is attending a nursing program, Respondent shall provide a copy of the entire Consent Agreement and Order to the Program Director. Respondent shall cause the Program Director to inform the Board, in writing and on school letterhead, acknowledgment of the program's receipt of a copy of the Consent Agreement and Order and the program's ability to comply with the conditions of probation during clinical experiences.

8. Monthly/Quarterly Reports

For the first six months of nursing employment following the effective date of this order, within 7 days of each assigned monthly reporting due date, if Respondent is working in any position which requires RN licensure Respondent shall cause **every** employer Respondent has worked for during that month to provide to the Board, in writing, employer evaluations on the Board-approved form. Thereafter, within 7 days of each assigned quarterly reporting due date, if Respondent is working in any position which requires RN licensure Respondent shall cause **every** employer Respondent has worked for during the quarter to provide to the Board, in writing, employer evaluations on the Board-approved form. The first report is due on the first assigned quarterly report due date after the effective date of the Order. Receipt of notice of an unsatisfactory employer evaluation, verbal or written warning, counseling or disciplinary action any of which pertain to patient care practice issues, or termination from a

place of employment shall be considered as noncompliance with the terms of the Order. In the event Respondent is not working in a position which required RN licensure, or attending school during any quarter or portion thereof, Respondent shall provide to the Board, in writing, a self-report describing other employment or activities on the Board-approved form. Failure to provide employer evaluations/or self-reports within 7 days of the reporting date shall be considered as noncompliance with the terms of the Order.

9. Practice Under Direct Supervision/ On site supervision

Respondent shall practice as a professional nurse, only under the direct supervision of a professional nurse in good standing with the Board, for the first 18 months. Direct supervision is defined as having a professional nurse present on the same unit with the Respondent whenever Respondent is practicing as a professional nurse. Thereafter and until completion of probation, Respondent shall practice only under the on-site supervision of a professional nurse in good standing with the Board. On-site supervision is defined as having a professional nurse in present in the building while Respondent is on duty. The supervising nurse shall have read this Consent Agreement and Order to include the Findings of Fact and Conclusions of Law, and Order, and shall provide input on Respondent's employer evaluations to the Board. The supervising nurse shall be primarily one person, who may periodically delegate to other qualified personnel, who shall also have read this Consent Agreement and Order to include Findings of Fact, Conclusions of Law. In the event the assigned supervising nurse is no longer responsible for the supervision required by this paragraph, Respondent shall cause her new assigned supervising nurse to inform the Board, in writing and on employer letterhead, acknowledgment of the new supervising nurse's receipt of a copy of this Consent Agreement and Order to include Findings of Fact and Conclusions of Law and the new

supervising nurse's agreement to comply with the conditions of probation within seven days of assignment of a new supervising nurse.

10. Acceptable Hours of Work

Respondent shall work only the day or evening shift. Evening shift is defined as a shift that ends prior to midnight. Within a 14-day period Respondent shall not work more than 84 scheduled hours.

Respondent may work three 12-hour shifts in one seven day period and four 12-hour shifts in the other seven-day period, but Respondent may not work more than 3 consecutive 12-hour shifts during this probationary period. Respondent shall not work 2 consecutive 8 hour shifts within a 24 hour period or be scheduled to work 16 hours within a 24 hour period.

11. Registry Work Prohibited

Respondent may not work for a nurse's registry, home health, traveling nurse agency, any other temporary employing agencies, float pool, or position that requires on-call status.

12. Out-of-State Practice/Residence

Before any out-of-state practice or residence can be credited toward fulfillment of these terms and conditions, it must first be approved by the Board prior to leaving the state. If Respondent fails to receive such approval before leaving the state, none of the time spent out-of-state will be credited to the fulfillment of the terms and conditions of this Order.

13. Release of Information Forms

Respondent shall immediately execute all release of information forms as may be required by the Board or its designee.

14. Interview With the Board or Its Designee

Respondent shall appear in person or if residing out of state telephonically for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

15. Renewal of License

In the event the Respondent's professional nurse license is scheduled to expire while this Order is in effect, Respondent shall apply for renewal of the license, pay the applicable fee, and otherwise maintain qualification to practice nursing in Arizona.

16. Change of Employment/Personal Address/Telephone Number

Respondent shall notify the Board, in writing, within one week of any change in nursing employment, personal address or telephone number.

17. Obey All Laws

Respondent shall obey all federal, state and local laws, and all laws/rules governing the practice of nursing in this state. Offenses such as driving under the influence may subject Respondent to further disciplinary action, however, commission of minor civil traffic moving violations are excluded.

18. Costs

Respondent shall bear all costs of complying with this Order.

19. Voluntary Surrender of License

Respondent may, at any time this Order is in effect, voluntarily request surrender of her license.

20. Violation of Probation

If during the stayed revocation portion of the Order Respondent is non-compliant with the terms of the Order in any way, the stay of revocation shall be lifted and

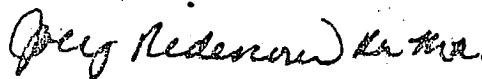
Respondent's license shall be automatically revoked. If during the standard probation portion of the Order Respondent is noncompliant with the terms of the Order in any respect, the Board staff may notify the Respondent's employer of the non-compliance. Additionally, the Board may revoke probation and take further disciplinary action for noncompliance with this Consent Agreement and Order after affording Respondent notice and the opportunity to be heard. If a complaint or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

21. Completion of Order

Upon successful completion of the terms of probation, Applicant shall request formal review by the Board, and after formal review by the Board, Applicant's nursing license may be fully restored by the appropriate Board action if compliance with this Order has been demonstrated.

ARIZONA STATE BOARD OF NURSING

SEAL



Joey Ridenour, R.N., M.N.
Executive Director

Dated: March 20, 2006

JR/PGW:bs

COPY mailed this 11th day of April, 2006, by First Class Mail to:

Jo Marie Lerner
575 S Newport Street
Chandler, AZ 85225

By: Brent Sutter
Legal Secretary

EXHIBIT C

BEFORE THE ARIZONA STATE BOARD OF NURSING

IN THE MATTER OF THE DISCIPLINARY)
ACTION AGAINST PROFESSIONAL)
NURSE LICENSE NO.: RN117295)
ISSUED TO:)
JO MARIE LERNER)

NOTICE OF REVOCATION

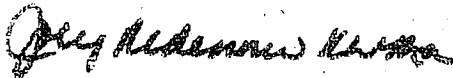
The Arizona State Board of Nursing hereby gives notice that the professional nurse license number RN117295, issued to Jo Marie Lerner, is hereby revoked in accordance with the provisions of Consent Agreement and Order No. 0511122 and is effective upon the date of this Notice of Revocation.

Pursuant to R4-19-404(B), Jo Marie Lerner may apply for reinstatement of said licenses after a period of five years.

DATED this 22nd day of September, 2006.

ARIZONA STATE BOARD OF NURSING

SEAL



Joey Ridenour, R.N., M.N.
Executive Director

Dated: September 22, 2006

JR/PW:bs

COPY mailed this 22nd day of September, 2006, by Certified Mail No. 7001 1940 0003 4511
6125 and First Class mail to:

Jo-Marie Lerner
575 S Newport Street
Chandler, AZ 85225

By: B. Sutter
Legal Secretary